

# Notice of Allowability

Application No.

10/682,644

Examiner

Mary J. Steelman

Applicant(s)

WALDIN ET AL.

Art Unit

2191

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 08/09/2006.
2. ☒ The allowed claim(s) is/are 1-4, 7-10, 13-16, 19-22, 25-28 and 31-34 (to be renumbered in order).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### **DETAILED ACTION**

1. This office action is in response to Remarks and Amendments received 08/09/2006. Per Applicant's request claims 5, 6, 11, 12, 17, 18, 23, 24, 29, 30, 35, and 36 are cancelled. Per Applicant's request the Specification has been amended. Claims 1-4, 7-10, 13-16, 19-22, 25-28, and 31-34 are pending.

#### ***Double Patenting***

2. A terminal disclaimer (as related to USPN 6,651,249) has been entered and approved.

#### ***Claim Rejections - 35 USC § 112***

3. In view of the cancellation of claims 5, 6, 11, 12, 17, 18, 23, 24, 29, 30, 35, and 36, the prior 35 U.S.C. 112 1<sup>st</sup> paragraph rejection is hereby withdrawn.

#### ***Allowable Subject Matter***

4. Claims 1-4, 7-10, 13-16, 19-22, 25-28, and 31-34 (to be renumbered in order) are allowed.

5. The following is an examiner's statement of reasons for allowance:

Applicant has provided a terminal disclosure to related US Patent 6,651,249. As noted in the reasons for allowance of US Patent 6,651,249, Squibb (USPN 5,729,743), Heath (USPN 6,006,034), Mangat (USPN 6,081,814), and other cited prior art, taken alone or in combination, fail to teach, in view of all cited limitations:

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As related to independent claim 1 (similarly recited in claims 4, 19, and 22): “storing the update patches such that each update patch is accessible to at least one update data source, where each update data source is disposed to receive a request associated with one of the update patches and transmit the requested update patch over a computer network”

As related to independent claim 7 (similarly recited in claims 10, 25, and 28): “the update patch having a tier greater than one contains fewer bits than the agglomerated sequential plurality of unitary update patches”

As related to independent claim 13 (similarly recited in claims 16, 31, and 34): “flavor consists of at least one characteristic from the group of characteristics comprising computer architecture with which the computer readable file can be used, operating system with which the computer readable file can be used, and natural language with which the computer readable file communicates to users”

Moreover, evidence for modifying the prior art teachings by one of ordinary skill level in the art was not uncovered so as to result in the invention. Thus, all remaining dependent claims, claims 2, 3, 8, 9, 14, 15, 20, 21, 26, 27, 32, and 33 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Steelman, whose telephone number is (571) 272-3704. The examiner can normally be reached Monday through Thursday, from 7:00 AM to 5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached at (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary Steelman



10/12/2006